

EXAMPLE, per quarter:**[THIS SECTION FOR SUPPLIER INFORMATION]**

Total primary supplier sales/revenues \$1,000,000

Total contract sales to Bank One	\$200,000
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Percentage of sales to Bank One (#2 ÷ #1)	20%
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Total MBE ¹ primary supplier purchases	\$50,000
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Prorate MBE purchase against Bank One sales (#3 x #4)	\$10,000
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Percentage of MBE purchases to Bank One sales (#5 ÷ #2)	5%
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While the Indirect reporting method is an acceptable process, because the numbers are not verifiable to a particular contract, they cannot be included in the M/WBE, SBE, and SDB procurement objectives, but will be captured in demonstrating a M/WBE, SBE, and SDB inclusion where possible. Bank One reserves the right to randomly audit reported data for verification.

Separate calculation for WBE, SDB, and SBE.

Direct Suppliers: Total direct dollars for BANK ONE CORPORATION business – List actual MWBE, SBE, and SDB firms used.

Company Information	Business Group Classification	Gender/Ethnic Origin	Amount Paid
Company Name: Address: City: St. Zip Phone No.: Contact Name: Product/Service: Certification Number:	<input type="checkbox"/> Minority <input type="checkbox"/> Woman-owned <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadv.	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> African <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native	
Company Name: Address: City: St. Zip Phone No.: Contact Name: Product/Service: Certification Number:	<input type="checkbox"/> Minority <input type="checkbox"/> Woman-owned <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadv.	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> African <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native	
Company Name: Address: City: St. Zip Phone No.: Contact Name: Product Service: Certification Number:	<input type="checkbox"/> Minority <input type="checkbox"/> Woman-owned <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadv.	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> African <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native	
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		GRAND TOTAL	

Form Submitted by: _____ Signature _____ Date _____

(THIS FORM MAY BE DUPLICATED FOR ADDITIONAL REPORTING SHEETS)

Schedule B-3

Short Form Agreement and General Conditions for Product / Services 3/03/2003

EXHIBIT D

ADDITIONAL WARRANTIES

D-1

**SCHEDULE D
INSURANCE
OWNER CONTROLLED INSURANCE PROGRAM
Bank One - Delaware Projects**

A. Owner Controlled Insurance Program

The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers' Compensation, Employer's Liability, General Liability and Excess Liability Insurance for the Construction Manager and all eligible Contractors of every tier providing direct labor on the Project. The Owner agrees to pay all premium associated with the OCIP including deductibles or self-insured retention unless otherwise stated in the Contract Documents.

The Owner will also provide Builder's Risk coverage as outlined in Section G (4).

Eligible Contractors include all contractors providing direct labor on the project site (see definition of ineligible contractors below). Temporary labor services and leasing companies that include direct labor on the project site are to be treated as a contractor.

B. Applicability of the OCIP

The following types of contractors (hereinafter called ineligible contractors) shall not be eligible for coverage in the OCIP: consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope of work performed), and other temporary project services. In addition to the above, the Owner may choose not to include in the OCIP contractors of any tier whose contract, on a single basis, does not exceed \$10,000 in value. Ineligible contractors shall be required to maintain their own insurance of the types and with the limits as set forth in Section L, at their own expense, and shall promptly furnish the Owner, or its designated representative, certificates of insurance giving evidence that all required insurance is in force.

C. Insurance Cost Identification

The Construction Manager and all eligible Contractors shall identify the cost of insurance on the Project, Form 2. The Construction Manager and all Contractors of every tier agree to identify all costs associated with the cost of insurance for all work, including but not limited to insurance premiums, expected losses within any retention or deductible program (loss rate), claims handling charges, service and broker fees, overhead and profit, using Form 2 (Insurance Cost Identification Worksheet).

By completing and submitting this insurance cost information, including supporting documents to the Owner, Construction Manager and Contractors warrant that all cost for insurance as described in this paragraph have been correctly identified. Coverage and limit requirements are:

(1) Workers' Compensation and Employer's Liability Insurance:

WORKERS' COMPENSATION INSURANCE WITH Statutory Benefits as provided by state statute; and EMPLOYER'S LIABILITY LIMITS:

- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

(2) Commercial General Liability and Insurance:

- (a) Bodily Injury, Property Damage and General Aggregate limits as required in Article V.
- (b) The limits required in Article V. can be satisfied by a combination of general and umbrella liability policies.
- (c) Coverage should include but not be limited to the following supplementary coverage:

- (i) Contractual Liability to cover liability assumed under this agreement,
- (ii) Product and Completed Operations Liability Insurance,
- (iii) Broad Form Property Damage Liability Insurance,
- (iv) Explosion, collapse and underground hazards (deletion of the X,C,U exclusions) if such exposure exist, and
- (v) Independent Contractors.

Construction Manager and all eligible Contractors will provide Owner, or its designated Program Administrator and/or insurance carrier, with supporting documentation to verify the workers' compensation, general liability and umbrella liability rates to be used throughout the project to determine the Construction Manager's and Contractors' insurance credits. The insurance rates agreed to prior to execution of this agreement will be the rates used to calculate the final insurance credit for Construction Manager and each eligible Contractor of every tier. Any eligible Contractor of any tier that does not enroll in the OCIP will have a minimum 6% of their contract amount automatically deducted for their insurance credit.

Construction Manager and all eligible Contractors will be required to provide copies of their current declaration pages and premium rate pages for their workers' compensation, general liability and umbrella liability policies to verify the rates they are utilizing on the Insurance Cost Identification Worksheet. If eligible Contractors have insurance policies with deductibles or other loss sensitive programs, they must provide copies of the past five years audited workers' compensation payrolls, currently dated claim loss runs for those same five years for their workers compensation and general liability policies and copies of their deductible or program agreement with their insurance carrier to support the calculation of the loss rate and fixed cost (premium) rate being utilized. If eligible Contractor does not provide this information, the rates for the insurance credit will be calculated using one of the following two methods: 1) the OCIP carrier's manual rates for workers' compensation and general liability insurance or 2) the loss sensitive rates at maximum cost (the fixed cost plus the aggregate loss cost plus claims handling charges plus insurance agent/broker fee) for general liability and workers' compensation insurance.

It is understood and agreed, Construction Manager's and Contractors' insurance cost identified on their Insurance Cost Identification Worksheet, Form 2, is an initial estimate only. The final insurance cost will be subject to final audited payrolls, and if applicable, contract amount and cost of subcontracted work, multiplied by the appropriate insurance rates as agreed to prior to the start of the work. Because the OCIP is subject to a minimum premium, the final insurance credits for Construction Manager and each eligible Contractor of every tier will be subject to their minimum insurance credit and are only subject to an additional deductive change order/charge, not a credit/return. The contract award will be based on the total estimated cost of work including insurance costs. An initial deductive change order will be processed to transfer the insurance cost into the project insurance program. During the term of the contract, including extended periods thereof, the Owner shall have the right to recover all costs for insurance as described in Section C (1), (2), and (3) and Section D that are in addition to those initially identified in the initial deductive change order. The Owner shall have the right to recover these additional costs through deductive change orders.

Contractors of every tier shall complete and submit the Insurance Cost Identification Worksheet, Form 2 as part of their bid to Construction Manager. Construction Manager shall promptly provide copies of such Form 2's to Owner.

D. Change Order Pricing

Construction Manager shall price, and shall require that all eligible Contractors price change order pricing equal to or greater than fifty thousand dollars (\$50,000) to include the cost to provide insurance as specified in Section C using Construction Manager's and Contractors' previously agreed upon rates, and shall identify the amount of insurance contained in the change order proposal using the Supplemental Insurance Information Form, Form 3.

The Construction Manager's and eligible Contractors' price shall be adjusted by removing the cost of insurance as identified on Form 3. The Owner shall have the right to recover these additional costs through deductive change orders.

E. Responsibility for Contractors

The Construction Manager and its Contractors shall require each of their eligible subcontractors to identify the cost for the coverage associated with the work performed for or on their behalf as outlined in this agreement using the methods and documents described herein. Any eligible Contractor not enrolled in the OCIP will automatically have a minimum of 6% of their contract amount deducted from their contract for their insurance credit.

The Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors.

F. Audit and Recovery of "Insurance Cost"

For insurance purposes, Construction Manager and Contractors of every tier agree, and shall require all tiers of subcontractors to agree, to keep and maintain accurate and classified records of its payroll for operations at the project site. Construction Manager and Contractors further agree, and will require all tiers of subcontractors to agree, to furnish to the Program Administrator (the insurance company and Willis) full and accurate payroll data and information in accordance with the requirements of the OCIP Project Insurance Manual, incorporated herein by this reference. Construction Manager and all Contractors shall permit the Owner or its representative to examine and/or audit its relevant books and records. Construction Manager and Contractors shall also provide any additional relevant information to Construction Manager or its appointed representatives as may be required. During the term of the Contractor's contract including extended periods thereof, the Construction Manager shall have the right to adjust the contract price to reflect the cost of the Contractors' insurance costs had the Owner not implemented an OCIP.

G. Sponsor Provided Coverage

The Owner, at its sole expense, has implemented an Owner Controlled Insurance Program (OCIP) to furnish certain insurance coverage with respects to on-site activities. All policies shall be issued by companies rated A- IX or higher in the most recent A.M. Best ratings. The OCIP will be for the benefit of the Owner, Construction Manager and its eligible Contractors of all tiers (unless specifically excluded) who have on-site employees. Such coverage applies only to work performed under this contract at the Project Site. Construction Manager and eligible Contractors must provide their own insurance for off-site activities that complies with Section L.

The Owner, at its sole expense, will provide and maintain in force the types of insurance listed in subparagraphs (1) through (4) below as a part of the OCIP for Construction Manager and all enrolled/eligible Contractors. Construction Manager and all enrolled Contractors will each receive their own workers' compensation policies and Construction Manager and all enrolled Contractors will be named as Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and all enrolled Contractors will receive certificates of insurance evidencing that they are Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and Contractors enrolled in the OCIP agree that the policy limits of liability, coverage terms, conditions and exclusions shall determine the scope of coverage provided by the OCIP. Construction Manager Contractors agree that the purpose of this section is to provide a general understanding of the coverage provided by the OCIP.

(1) **Workers' Compensation and Employer's Liability Insurance** will be provided in accordance with applicable State laws. Limits of Liability and coverage will be as follows:

- (a) Workers' Compensation, form WC 00 00 00 A – Applicable State Statutory Benefits
- (b) Employer's Liability

- (i) \$1,000,000 Bodily Injury each Accident
- (ii) \$1,000,000 Bodily Injury by Disease - Policy Limit
- (iii) \$1,000,000 Bodily Injury by Disease - Each Employee

(c) Employers Liability Exclusions:

- (i) liability assumed under a contract;
- (ii) punitive or exemplary damages;
- (iii) bodily injury to an employee while knowingly employed in violation of the law;
- (iv) obligations imposed by a workers compensation, occupational disease or similar law;
- (v) bodily injury intentionally caused or aggravated by the insured;
- (vi) bodily injury occurring outside of the United States of America;
- (vii) any personnel practices, policies acts or omissions;
- (viii) bodily injury to any person subject to any federal workers or workmen's compensation law or occupational disease law;
- (ix) bodily injury to any person in work subject to the Federal Employers' Liability Act;
- (x) bodily injury to a master or member of the crew of any vessel;
- (xi) fines or penalties imposed for violation of federal or state law;
- (xii) damages payable under the Migrant and Seasonal Agricultural Worker Protection Act.

(2) Commercial General Liability Insurance will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverage, and Terms:

(a) Limit of Liability:

\$1,000,000 Combined Single Limit any one occurrence and \$2,000,000 in the aggregate annually

(b) Coverage and Terms:

- (i) Occurrence Basis, CG 00 01 (10/01 edition date);
- (ii) Blanket Additional Insured endorsement (excluding completed operations)
- (iii) Blanket Contractual Liability;
- (iv) Products and Completed Operations (Two Year Term); with a term aggregate of \$2,000,000;
- (v) Independent Contractor's Liability;
- (vi) Personal Injury;
- (vii) Explosion, Collapse, and Underground (X, C, U exclusions deleted), and
- (viii) Designated Premises Only.

(c) Exclusions:

- (i) Expected or Intended Injury;
- (ii) Contractual Liability;
- (iii) Liquor Liability;
- (iv) Workers' Compensation and Similar Laws;
- (v) Employer's Liability;
- (vi) Aircraft, Auto or Watercraft;
- (vii) Mobile Equipment;
- (viii) War;
- (ix) Damage to Property;
- (x) Damage To Your Product;
- (xi) Damage To Your Work;
- (xii) Damage To Impaired Property Or Property Not Physically Injured;
- (xiii) Recall of Products, Work Or Impaired Property;
- (xiv) Employment Related Practices, form CG 21 47 (edition 7/98);

- (xv) Total Pollution Exclusion With A Hostile Fire Exception, form CG 21 55 (edition 9/99);
- (xvi) Exclusion- Engineers, Architects Or Surveyors Professional Liability, form CG 22 43 (edition 7/98);
- (xvii) Exclusion- Contractors- Professional Liability, form CG 22 79 (edition 7/98);
- (xviii) Total Lead Exclusion, form 58332 (edition 7/93);
- (xix) Radioactive Matter Exclusion, form 62898 (edition 9/01);
- (xx) Asbestos Exclusion Endorsement, form 65165 (edition 9/01);
- (xxi) Exclusion For Continuing Or Progressive "Bodily Injury", "Personal And Advertising Injury" Or "Property Damage", (manuscript form);
- (xxii) Fungus Exclusion, form 78689 (edition 8/01);
- (xxiii) Nuclear Energy Liability Exclusion Endorsement (Broad Form), form IL 00 21 (edition 4/98);

Additional Exclusions for Medical Payments:

- (i) Any Insured;
- (ii) Hired Person;
- (iii) Injury On Normally Occupied Premises;
- (iv) Workers Compensation And Similar Laws;
- (v) Athletic Activities;
- (vi) Products-Completed Operations Hazard;

Exclusions for Personal and Advertising Injury Liability:

- (i) Knowing Violation Of Rights Of Another;
- (ii) Material Published With Knowledge Of Falsity;
- (iii) Material Published Prior To Policy Period;
- (iv) Criminal Acts;
- (v) Contractual Liability;
- (vi) Breach Of Contract;
- (vii) Quality Of Performance Of Goods- Failure To Conform To Statements;
- (viii) Wrong Description Of Prices
- (ix) Infringement Of Copyright, Patent, Trademark Or Trade Secret;
- (x) Insureds In Media And Internet Type Business;
- (xi) Electronic Chatrooms Or Bulletin Boards;
- (xii) Unauthorized Use Of Another's Name Or Product;
- (xiii) Pollution;
- (xiv) Pollution- Related;

Additional Exclusions for Additional Insured- Owner, Lessees Or Contractors- Scheduled Person Or Organization, form CG 20 10 (edition 10/01):

- (i) This insurance does not apply to "bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(3) Excess Liability Insurance will be provided under a master liability policy with Limits of Liability, Coverages, and Terms as follows:

(a) Limits of Liability:

- (i) \$100,000,000 Any one occurrence and general aggregate annually; and
- (ii) \$100,000,000 Term Aggregate Products and Completed Operations.

(b) Coverage and Terms:

- (i) Excess of General Liability
- (ii) Excess of Employer's Liability
- (iii) Excess Completed Operations (Two Year Term)

(4) Builder's Risk Insurance

The Builder's Risk Insurance will provide Cause of Loss, Special (All-Risk) coverage on a replacement cost basis for the entire construction value, including change orders. This insurance will include as additional insureds Construction Manager and all tiers of Contractors in the Work. The policy includes 1) a waiver of subrogation for Construction Manager and all Contractors of every tier, 2) a sublimit of \$1,000,000 each claim for off-premises storage of materials and transit to the job-site and 3) a \$10,000,000 sublimit for flood and earthquake coverage. In addition to the standard policy exclusions, the policy may contain a terrorism exclusion.

The Builder's Risk will not provide coverage against loss including by theft or disappearance, of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Construction Manager or any tier of Contractor, or any other person furnishing labor or materials for the Work.

All tiers of Contractor shall be responsible for the first \$25,000 of each and every loss.

Any loss insured under Exhibit I, G(4) is to be adjusted with the Owner and made payable to the Owner as fiduciary for the additional insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Construction Manager shall pay each Contractor a just share of any insurance monies received by the Construction Manager, and Construction Manager shall require each Contractor to make payments to his subcontractors in a similar manner. Construction Manager agrees to reconstruct any portion of the Work lost, destroyed or damaged to the extent that Owner makes the proceeds of the insurance (and additional funds if such proceeds are less than replacement cost) available to Construction Manager.

The Owner will make available upon request for inspection by Construction Manager a certificate of Insurance evidencing builder's risk insurance to be furnished by Owner.

H. OCIP Certificates and Policies

All OCIP furnished insurance coverage outlined above shall be written by insurance companies approved by the Owner. The Owner, through the Program Administrator, shall provide all Contractor(s) with appropriate certificates of insurance evidencing the coverage outlined above.

I. Termination/Modification of the OCIP

The Owner reserves the right to terminate or to modify the OCIP or any portion thereof. To exercise this right, the Owner shall provide thirty (30) days advance written notice of termination or material modification to Construction Manager and all Contractor(s) covered by the OCIP. The Construction Manager and all Contractors shall promptly obtain quotations for appropriate replacement insurance coverage and shall review such quotes with Owner. If such quotations are reasonably acceptable to Owner, then Construction Manager and Contractors shall promptly bind such replacement coverage at Owner's expense (except as noted below in this subparagraph I). If quotations obtained by Construction Manager or any of the Contractors are not reasonably acceptable to Owner, Owner and Construction Manager shall work together to identify appropriate replacement insurance coverage that is reasonably acceptable to the Owner. The actual documented cost of such replacement insurance will be reimbursed by the Owner, except as noted below in this subparagraph I. Written evidence of such insurance shall be provided to the Owner prior to the effective date of the termination or modification of the OCIP. The minimum acceptable coverage and limits of liability are as required in Section C. In addition, Construction Manager's umbrella liability policy limit of liability will be not less than \$100,000,000 each occurrence and aggregate.

J. Construction Manager and Contractors' Responsibilities

The Construction Manager and Contractors are required to cooperate with the Owner's Representative, Construction Manager, Program Administrator and insurance carriers with regards to the administration and operation of the OCIP. The Construction Manager and Contractors' responsibilities shall include, but not be limited to:

- (1) Complying with applicable construction safety requirements, the OCIP Project Manual and Claims Procedures as outlined in the respective manuals setting forth the administrative procedures required of the Construction Manager and Contractors;
- (2) Providing of necessary contract, operations and insurance information;
- (3) Immediately notifying the Program Administrator of all Contractors upon award of a contract by completing Form-1, Notice of Subcontract Award and Request for Insurance and sending to the Program Administrator;
- (4) Maintaining payroll records and other records as necessary for premium and insurance credit computation;
- (5) Cooperating with the insurance company and the Program Administrator with respect to requests for claims, payroll or other information required under the program;
- (6) Immediately notifying the Program Administrator when any Contractor-Provided Coverage have been canceled, materially changed, or not been renewed; and,
- (7) Timely completion of OCIP Forms:
 - (a) Construction Manager will complete a Notice of Subcontract Award and Request for Insurance – Form 1, upon award of each (Contractor) contract;
 - (b) Construction Manager and eligible Contractors of every tier will complete an Insurance Information Form – Form 2, upon award of a (Contractor) contract;
 - (c) Contractor will complete a Notice of Subcontract Award and Request For Insurance – Form 1, upon award of a (Contractor) contract to a second or third tier subcontractor.
 - (d) Construction Manager will complete a Notice of Completion – Form 4, upon completion of all work being performed under a Contractor's contract.
 - (e) Contractor will complete a Supplemental Insurance Information Form – Form 3, upon execution of any change order in excess of \$50,000.

Failure to follow the procedures outlined in the OCIP Project and Claims Procedures Manual or this Exhibit may result in withholding progress payments or contract default.

K. Assignment of Return Premiums

The Owner will be responsible for the payment of all premiums associated solely with the OCIP and Builders' Risk and will be the sole recipient of any dividend(s) and/or return premium(s) generated by either. In consideration of the Owner providing of said coverage the Construction Manager and all eligible Contractor(s) agree to:

- (1) Identify all applicable insurance costs in their contract price, and cooperate with the Program Administrator in the confirmation of the Contractor's insurance cost.
- (2) Irrevocably assigned to and for the benefit of the Owner, all return premiums, premium discounts, dividends, retentions, credits, and any other monies due the Owner in connection with the

insurance which herein it agrees to provide, and Construction Manager and eligible Contractors agree to evidence same by signing Form 2. The Construction Manager and all eligible Contractors further agree to require each subcontractor of any tier to execute the assignment on Form 2, for the benefit of the Owner.

L. Contractor Provided Coverage

For any work under this contract, and until completion and final acceptance of the work all ineligible Contractors as defined in Section B of this document shall provide certificates of insurance to Construction Manager giving evidence that coverage is in force, as required in Section C. The project site should be shown on the certificate and the Owner, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability Policy and Automobile Policy.

For any work under this contract, and until completion and final acceptance of the work, Construction Manager and all Contractors, at their own expense shall promptly furnish to the Owner certificates of insurance giving evidence that the following coverages are in force:

(1) Automobile Liability Insurance

\$1,000,000 combined single limit for bodily injury and property damage insuring all owned, non-owned and hired automobiles.

(2) Workers' Compensation and Employer's Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):

Statutory Limits with Other States Endorsement and minimum Employer's Liability Limits as follows:

- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

(3) Commercial General Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):

- (a) Commercial General Liability with a limit of liability as required in Article V. for bodily injury, property damage and personal injury, including the following coverages. (The limits can be satisfied by a combination of general and umbrella liability policies.)

- (i) Occurrence Basis;
- (ii) Premises Operations;
- (iii) Contractual Liability;
- (iv) Products/Completed Operations;
- (v) Broad Form Property Damage; and
- (vi) Independent Contractors.

- (4) The Owner, Owner's Representative, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability and Automobile Liability policies as listed in Article U.

(5) Contractors' Pollution Liability Insurance

- (a) This coverage is required of Construction Manager and all Contractors.
- (b) Limits of Liability of \$2,000,000 each claim and aggregate with a deductible no greater than \$100,000 each claim.

- (c) The policy will provide coverage for sums that Construction Manager and Contractors become legally obligated to pay as loss as a result of claims for bodily injury, property damage or clean-up costs caused by pollution incident. Pollution incidents will include the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.
- (d) If the policy maintained by Construction Manager and/or Contractors is a "claims made" form, Construction Manager and/or Contractors will maintain this required coverage for four years after completion of the project.

(6) Professional Liability Insurance (Errors & Omissions)

- (a) The Construction Manager and all Contractors whose contracts require design services will maintain professional liability insurance providing coverage for claims allegedly arising out of errors, omissions or negligent acts due to their performance, or failure to perform, design, architectural, engineering, land surveying or interior design.
- (b) Limits of liability of not less than \$2,000,000 each claim and annual aggregate with a deductible no greater than \$100,000.

M. Certificate of Insurance

All required insurance shall be maintained without interruption from the date of commencement of the work under the agreement until the date of the final payment. The Construction Manager will provide Owner and the Contractors will provide the Construction Manager with a certificate of insurance evidencing compliance with the coverages, limits and conditions required in Section L until the date of final payments.

N. Notice of Cancellation

Policies and/or certificates of insurance shall specifically provide a thirty (30) day notice of cancellation, non-renewal or material change to be sent to the Owner and Construction Manager.

O. Other Insurance

Any type of insurance or any increase of limits of liability not described above which a Contractor requires for its own protection or on account of any statute shall be its own responsibility and its own expense.

P. Contractor Participation

Upon the execution of any subcontract, the Construction Manager will immediately report that subcontract to the Program Administrator for enrollment in the OCIP. The Contractor shall incorporate all the provisions of this agreement in any subcontractor agreement and shall cause its Contractors to cooperate fully with the Owner, Construction Manager, Program Administrator and insurance companies for the project, in the administration of the OCIP. The Contractor agrees to cooperate in the safety and accident prevention program and claim handling procedures as established for the project. In accordance with this paragraph Construction Manager shall not permit any eligible Contractor of any tier to enter the project site prior to notifying the Program Administrator, by completion of Form 1, of the Contractor's enrollment in the Owner Controlled Insurance Program (OCIP); failure to do so may negate the afforded coverage(s).

Q. Waiver of Subrogation

The Construction Manager and all Contractors waive all rights of subrogation and recovery against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers to the extent of any loss or damage, which is insured under the OCIP. Notwithstanding the foregoing and notwithstanding limitation of the same, Contractor waives its rights of subrogation and recovery for damage to any property or equipment against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers. Each Contractor shall require all subcontractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

R. No Release

The carrying of the above-described insurance shall in no way be interpreted as relieving the Construction Manager or Contractors of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

S. Approval of Forms and Companies

All insurance described in this agreement shall be written by an insurance company or companies reasonably satisfactory to the Owner and licensed to do business in Maryland and shall be in a form and content reasonably satisfactory to the Owner. No party subject to the provisions of this agreement shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

T. The Project OCIP Project and Claims Procedures Manual

The Construction Manager and all Contractors shall adhere to and perform all reporting requirements as detailed in the OCIP Insurance Project and Claims Procedures Manual. Failure to follow the procedures outlined in the manual may result in fines being assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against Owner, Construction Manager or the Contractor. The Contractor, shall at its own expense, be responsible for any fines or judgments arising out of failure to follow these procedures.

U. Additional Insureds:

- Banc One Building Corporation, its parent and affiliates, directors, officers, representatives, agents and employees
- Tishman Construction Corporation
- Tishman Construction Corporation of Maryland
- Gensler (architect)
- EYP Mission Critical Facilities, Inc. (engineer)
- and their directors, officers, representatives, agents and employees

V. General Liability/Umbrella Liability Requirements

The following limits of liability apply based on Contractors' trade classification. The limits required can be satisfied by a combination of general and umbrella liability policies.

BASE BUILDING/CORE & SHELL

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Access Flooring	\$ 3,000,000
Acoustical Ceilings	\$ 2,000,000
Architectural Woodworking	\$ 3,000,000
Balcony Railings	\$ 5,000,000

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Carpentry, Drywall & Insulation	\$10,000,000
Carpeting	\$ 2,000,000
Caulking & Sealing	\$ 5,000,000
Ceramic Tile	\$ 2,000,000
Concrete Work	\$10,000,000
Convector Enclosures	\$3,000,000
Cranes	\$25,000,000
Curtain Wall	\$10,000,000
Demolition	\$20,000,000
Electrical	\$10,000,000
Elevator Entrances	\$10,000,000
Elevators	\$10,000,000
Excavation & Foundation	\$10,000,000
Fireplaces	\$ 2,000,000
Food Service Equipment	\$ 2,000,000
Glass & Glazing	\$10,000,000
Granite Façade	\$10,000,000
Hoists	\$25,000,000
HVAC	\$10,000,000
Landscaping	\$ 5,000,000
Lath & Plaster	\$ 3,000,000
Lobby Finishes	\$ 3,000,000
Lockers	\$ 2,000,000
Louvers	\$ 3,000,000
Masonry	\$10,000,000
Mirrors	\$ 3,000,000
Miscellaneous Iron	\$10,000,000
Ornamental Metals	\$ 5,000,000
Painting & Finishing	\$ 2,000,000
Piling	\$10,000,000
Plumbing	\$10,000,000
Progress Photographs	\$ 2,000,000
Refuse Chute (Construction)	\$10,000,000
Resilient Flooring	\$ 2,000,000
Roll-Up Doors	\$ 3,000,000
Roofing, Waterproofing & Sheetmetal	\$10,000,000
Rubbish Removal (Construction)	\$ 5,000,000

BANC ONE 07954
(CONFIDENTIAL)

<u>Trade Classification</u>	Per Occurrence and General Aggregate <u>Combined Single Limit</u>
Scaffolds	\$20,000,000
Security Guard Service	\$ 3,000,000
Shower Doors	\$ 3,000,000
Sidewalk Bridges	\$20,000,000
Signs & Graphics (Exterior)	\$10,000,000
Signs & Graphics (Interior)	\$ 5,000,000
Site Improvements	\$ 5,000,000
Skylights	\$10,000,000
Spray Fireproofing	\$10,000,000
Sprinkler System	\$10,000,000
Stonework (Granite & Marble)	\$10,000,000
Storefronts	\$10,000,000
Structural Steel	\$20,000,000
Stucco (Exterior)	\$10,000,000
Surveying	\$ 2,000,000
Swimming Pools	\$ 5,000,000
Tennis Courts	\$ 3,000,000
Test Boring	\$ 5,000,000
Testing & Inspection	\$ 2,000,000
Toilet Partitions	\$ 2,000,000
Trash Chute (Compactor)	\$ 5,000,000
Trash Compactor	\$ 2,000,000
Venetian Blinds	\$ 3,000,000
Waterproofing & Dampproofing	\$10,000,000
Window Washing Equipment	\$10,000,000
Windows	\$10,000,000
Wood Flooring	\$ 2,000,000

INTERIOR FITOUT/TECHNOLOGIES

<u>Trade Classification</u>	Per Occurrence and General Aggregate <u>Combined Single Limit</u>
Acoustical Ceiling	\$ 1,000,000
Aluminum Windows	\$ 3,000,000
Balcony Railings	\$ 5,000,000
Carpeting	\$ 1,000,000
Carpentry, Millwork, etc.	\$ 2,000,000

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Caulking & Sealing	\$ 1,000,000
Ceramic Tile	\$ 1,000,000
Concrete Work	\$ 3,000,000
Cranes	\$25,000,000
Demolition	\$ 5,000,000
Drywall	\$ 2,000,000
Electrical	\$ 3,000,000
Elevators	\$ 5,000,000
Façade Cleaning	\$ 5,000,000
General Contractor	\$10,000,000
Glass & Glazing	\$ 3,000,000
Hoists	\$25,000,000
HVAC	\$ 3,000,000
Lath & Plaster	\$ 2,000,000
Lockers	\$ 1,000,000
Masonry/Stone	\$ 3,000,000
Metal Toilet Partitions & Accessories	\$ 1,000,000
Ornamental Misc. Metals	\$ 2,000,000
Painting & Finishing	\$ 1,000,000
Plumbing	\$ 3,000,000
Resilient Flooring	\$ 1,000,000
Roofing & Sheet Metal	\$ 3,000,000
Scaffolding	\$20,000,000
Signs & Graphics	\$ 1,000,000
Sprayed Fireproofing	\$ 2,000,000
Sprinkler System	\$ 3,000,000
Structural Steel	\$ 5,000,000
Waterproofing	\$ 1,000,000

EXHIBIT E

SHORT FORM AGREEMENT FOR PRODUCT / SERVICES
GENERAL CONDITIONS

1. Contract. The Contract Documents, including with any exhibits, drawings and specifications referred to in this Agreement shall constitute the entire agreement between the parties. Owner objects to and will not be bound by any past or future terms and conditions, or course of conduct not set forth in this Agreement, unless set forth in writing and signed by an authorized representative of Owner after the effective date of this Agreement. Any additional or inconsistent terms not so agreed upon by Owner in writing shall be null and void. Acceptance of any purchase order, confirmation order, work order, invoice or other forms of this kind shall not modify or supersede the terms of the Contract Documents. Any performance by Seller of this Product / Services shall be deemed acceptance by Seller of this Contract. No claims for changes or extras will be permitted for work or materials and no change in price or delivery date shall be allowed unless approved in writing and in advance by Owner. All terms defined either in the Agreement or in these General Conditions shall have the meaning ascribed to them wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2. Services.

A. Seller shall provide Owner with the products (the "Products") and related services ("Services") in accordance with the description and specifications contained on Exhibit A to this Agreement (the Products and Services will be collectively be referred to as the "Deliverables") at the Site identified on page 1 of this Agreement ("Site"). Seller shall furnish all materials and equipment needed to perform the Deliverables. It is expressly understood that nothing contained in this Agreement shall be construed as a commitment by Owner to utilize any of the Deliverables provided.

B. Seller shall perform or cause to be performed, in a first class manner and in accordance with the Contractor applicable industry standards, all work set forth in, contemplated by or reasonably inferable as being necessary to produce the intended results from, the drawings and specifications listed on Exhibit C to the Agreement, including all labor and materials to complete the general description of such work contained in the Agreement (collectively all such labor, materials, and services to be provided by Seller are in this Agreement called the "Work"). Seller shall ensure that its Key Staff Members, as listed on page 1 of the Agreement, to be continuously engaged in the Work and Seller shall not substitute any such Key Staff Member or alter their responsibilities related to the Work without Owner's prior written consent. Seller's Authorized Signatories, as listed on page 1 of the Agreement, are duly authorized and have full power to bind Seller. To the extent applicable, Seller shall furnish to Owner four complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment furnished under the Contract Documents and any additional data specifically requested under the various sections of the specifications of the Work. The manuals shall be arranged in proper order, indexed and suitably bound. Seller shall pay all royalties and license fees applicable to the Work and shall not unlawfully use or install any patented or other proprietary article. All Work shall be subject to inspection and acceptance by Owner. Any inspection and acceptance by Owner shall not constitute a waiver of any of its rights.

B. Seller shall comply with all applicable federal, state, municipal and local laws, ordinances, codes, rules, regulations, orders and decisions of all government authorities ("Laws") relating to the performance of the Deliverables, including without limitation: social security, unemployment compensation, and worker's compensation Laws and all applicable Laws pertaining to wages, hours and other terms and conditions of employment and all Laws requiring licenses, permits and bonds on employees and other evidence of governmental authority.

C. Seller shall make every effort to identify and implement cost saving programs and shall report to Owner as mutually agreed, regarding the nature and results of such efforts and programs.

3. Payment.

A. Owner shall pay Seller for the Deliverables in accordance with the Schedule of Values and Unit Prices attached to this Agreement as Exhibit B as it may be modified from time to time in accordance with this Subsection 3A. Seller shall not charge Owner for any additional costs, including without limitation, special or overtime rates for labor, unless such additional costs have been specifically approved in advance in writing by Owner, or unless a higher rate is necessitated by changes in federal or state law.

B. All charges shall be reflected in an invoice (the "Monthly Invoice") delivered to Owner. Seller shall submit the Monthly Invoice to Owner in such a form and with such supporting documentation, affidavits, waivers, and releases, as Owner may reasonably request. All payments made by either party under the terms of this Agreement shall be made in such a manner as mutually agreed by both parties.

4. Seller's Employees.

A. Seller and Owner acknowledge that Seller is an independent contractor and that neither Seller nor Seller's officers, shareholders, directors, partners, principals, employees, subcontractors, agents or anyone else acting for or on Seller's behalf (the "Seller Personnel") are employees of Owner, and that Seller and Seller Personnel will not participate in or be entitled to any benefits under any of Owner's benefit programs now existing or hereafter created, including, without limitation, Owner's pension plan, 401(k) or savings incentive plan, medical, life and accidental death insurance plans. The daily activities of Seller Personnel directed to work at the Site in fulfillment of the Deliverables shall be supervised and controlled by Seller, and Seller Personnel shall at all times remain employees of Seller which shall be solely responsible for the payment of each employee's benefits and entire compensation, including employment taxes, workers' compensation, and any similar taxes and requirements associated with employment.

B. Seller will recruit, employ, train, supervise, direct, discipline and, if necessary, discharge Seller Personnel working at the Site. Seller Personnel shall be able, qualified and trained personnel who shall be employees of and responsible solely to Seller. Seller agrees to transfer or otherwise remove any of Seller Personnel if so requested by Owner, in its discretion, with or without cause.

C. Seller and Seller Personnel will comply with all Owner's security regulations to gain entrance to the Site. Seller will ensure as a condition of employment with Seller, Seller Personnel will cooperate with any security or other investigation, and at the request of Owner, submit to any security tests or checks. Any of Seller Personnel whose misconduct disrupts Owner's normal operations shall be removed by Seller from the Site upon Owner's request.

D. Seller shall equip Seller Personnel with uniforms which bear Seller's logo, and shall place the logo on any equipment of Seller's required for the Deliverables to be performed while at the Site. Such uniforms and equipment shall be provided at Seller's or Seller Personnel's expense.

E. Seller warrants that all Seller Personnel provided to Owner are U.S. citizens or are otherwise legally entitled to accept employment with Seller and to provide services under this Agreement.

F. Should Seller be or become a party to any collective bargaining agreement, no provision in that agreement shall be binding upon Owner. Any attempt so to bind Owner shall be deemed to be a material breach of this Agreement. No provision in such a collective bargaining agreement shall operate to relieve Seller of its obligations under this Agreement.

G. Seller Personnel agree to cooperate with Owner and its counsel in connection with any investigation or litigation relating to any matter in which any of Seller Personnel was involved during the course of such person's assignment at Owner of which such person may have information or knowledge.

5. Supervision.

A. Seller shall be solely responsible for the direction and supervision of all Seller Personnel assigned to the Site. Seller shall provide a sufficient number of line supervisory personnel to ensure Seller's successful performance of its obligations under this Agreement.

B. Seller agrees to provide a representative who shall be accessible regarding any communication relevant to the Deliverables (the "Representative"). Owner may, at its option, request a change of the Representative at any time during the duration of this Agreement and Seller will honor Owner's request. Seller will not replace the Representative without first obtaining the express written approval of Owner.

6. Indemnification.

A. Seller shall indemnify and hold harmless Owner, and Construction Manager and each of their respective shareholders, directors, officers, employees, agents, partners, members, and anyone else acting for or on their behalf (the "Indemnified Parties"), from and against all liability, damage, loss, claims, demands, judgments, and actions of any nature whatsoever, including attorneys' fees and disbursements and other expenses ("Losses"), which arise out of or are connected with, or are claimed to arise out of or be connected with, any actual or claimed material, manufacturing, or design defect in the Products, or the negligence or willful misconduct of Seller or Seller Personnel in the performance or nonperformance of its obligations under this Agreement.

B. Seller shall indemnify and hold harmless the Indemnified Parties with respect to all Losses for patent, trademark, copyright or other intellectual property infringement arising out of the use, distribution or sale of the Products or any part thereof. If Owner is enjoined from use of the Products, Seller shall, at Owner's option, and at Seller's expense, either procure for Owner the right to continue using the Products, replace the Products with comparable noninfringing products satisfactory to Owner or repurchase the Products at the price paid by Owner under the terms of this Agreement less any depreciation allocable to the affected portion of the Products, determined on a straight-line basis over its useful life.

C. Seller shall indemnify and hold harmless the Indemnified Parties with respect to any and all Losses for claims made or brought against the Indemnified Parties by any former or present employee of Seller arising from or connected to such employee's tenure with Seller, including but not limited to claims of discrimination under Title VII of the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the United States Constitution, the constitution of the state where the project is located, or any other Laws or common law.

7. Warranty; Notice of Defects.

A. Seller warrants that the Products delivered to Owner are free from defects in design, materials, and workmanship and are merchantable, fit for the purpose indicated by Owner, and in compliance with the requirements of this Agreement. Seller further warrants that its title to the Products shall be good, that the transfer of that title to Owner shall be rightful, and that the Products shall be delivered free from all security interests or other liens or encumbrances. Seller shall replace or repair any of the Products, components of the Products or other items furnished by it under this Agreement, and redo any work or provide again any Service that fails to conform to the requirements of this Agreement if such nonconformance appears before expiration of any warranty provided by Seller or by any third party. Seller also extends to Owner any broader warranties on any components or subassemblies of the Products or other items furnished by Seller under this Agreement that may be provided by the manufacturer or supplier of such items and such additional warranties set forth in Exhibit D; provided, however, failure to list additional warranties in Exhibit D of this Agreement does not preclude Owner from receiving the benefits of any additional warranties. The provisions of this Section 7 shall not affect Owner's rights or Seller's obligations under Section 6.

B. If Seller knows or should have known of any material, manufacturing, or design defect in any of the Products or any defect in the Deliverables, it shall notify Owner of such defect within a reasonable time not to exceed thirty (30) days after Seller first knows or should have known of it.

C. Seller warrants that the Deliverables performed by Seller pursuant to this Agreement shall conform

to the specifications agreed upon by Seller and Owner under the terms of this Agreement.

8. Work Product. Seller and Owner each individually acknowledge and agree that all materials produced, developed, created or devised by Seller for Owner, including without limitation, work papers, sketches, drawings, designs, samples or models (collectively, "Work Product") shall be the sole property of Owner. Seller expressly acknowledges the parties' agreement that all aspects of the Work Product which may be subject to copyright protection are considered as Works Made For Hire within the meaning of the Copyright Act of 1976 (the "Act"). In the event and to the extent that the Work Product or any part thereof is found, as a matter of law, not to be a Work Made For Hire under the Act, Seller assigns to Owner the sole and exclusive right, title and interest in and to the Work Product without further consideration. Seller agrees to execute any assignments, registrations, certificates or other instruments as Owner may from time to time deem necessary or desirable to evidence, establish, maintain, perfect, protect, enforce or defend Owner's ownership in and to any of the foregoing.

9. Insurance. Owner has elected to implement an Owner Controlled Insurance Program ("OCIP") in accordance with Schedule A, attached herein, that will provide Workers' Compensation, Employer's Liability, General Liability and Excess "Umbrella" Insurance for the Construction Manager and all eligible Construction Contractors and sub-contractors of every tier providing direct labor on the Project. Owner agrees to pay all premiums associated with the OCIP including all deductibles or self-insured retentions unless otherwise stated in the Contract Documents.

The Owner will also provide, at its own cost, builder's risk coverage as outlined in Schedule A.

10. Termination.

A. If the Work is stopped in whole or in substantial part for a period of 180 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Seller or any subcontractor or any of their employees or agents, or if the Work in whole or in substantial part is stopped for a period of 60 days by Seller because Owner has not made payment of undisputed amounts therefor (other than as permitted by the Contract Documents), then Seller may, upon 30 additional days' written notice to Owner, terminate the Contract Documents and recover from Owner payment for all Work properly executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery together with reasonable out-of-pocket costs incurred by Seller in shutting down the Work; provided, however, that Seller shall in no event be entitled to recover for lost profits or consequential or other damages.

B. Owner may terminate the Contract Documents at any time without cause and without prior notice to Seller, and in such event, Owner will pay Seller for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the date of termination. Owner will not be responsible to reimburse Seller for any continuing contractual commitment to subcontractors or for penalties or damages for canceling such contractual commitments inasmuch as Seller shall make all subcontracts and other commitments subject to this provision.

11. Subcontractors.

A. Without Owner's prior written consent, which consent may be granted or withheld in Owner's sole discretion, Seller shall not (i) contract with any subcontractor for labor, materials, equipment, or supplies used in connection with the Deliverables or (ii) otherwise assign, delegate, or subcontract any of Seller's responsibilities or obligations to perform the Deliverables. Further, Seller shall not assign any monies due or to become due to Seller under this Agreement without the prior written consent of Owner.

B. By appropriate agreement, Seller shall require each subcontractor, to the extent of the Deliverables to be performed by such subcontractor, (i) to be bound to Seller by the terms contained in this Agreement, (ii) to assume toward Seller all of the obligations and responsibilities which Seller, by this Agreement, assumes toward Owner, and (iii) to grant to Seller all of the rights which Seller, by this Agreement, grants to Owner. Seller shall require each subcontractor to enter into similar agreements with its subcontractors. Seller shall make available to each proposed subcontractor, prior to the execution of the proposed subcontract, copies of this Agreement to which

the subcontractor will be bound by this Subsection 11B; provided, however, any and all pricing or fee information shall be deleted therefrom. Seller shall require each subcontractor to carry liability insurance having limits as set forth in Schedule A and otherwise satisfying all the requirements relating to Seller's liability insurance under Section 9' of this Agreement. In addition, Seller shall require each subcontractor to maintain workers' compensation insurance in accordance with requirements of applicable law.

12. Confidentiality. Seller, on behalf of itself and Seller Personnel, agrees that any and all Confidential Information (as defined below) is and shall remain the property of Owner to be held in strict confidence by Seller and Seller Personnel. "Confidential Information" includes all technical, business, personnel, taxpayer or other information, including customer or client information, however communicated or disclosed to Seller or Seller Personnel, relating to past, present and future research, development and business activities of Owner. Seller, on behalf of itself and Seller Personnel, agrees that Seller and Seller Personnel may disclose Confidential Information to others only with the prior written consent of Owner. Seller, on behalf of itself and Seller Personnel, further agrees not to make use of Confidential Information, other than for the performance of this Agreement, and Seller, on behalf of itself and Seller Personnel, also agrees that it will not use such information for its own advantage to the detriment of Owner or its customers. Confidential Information shall not include information which (i) becomes generally available to the public (other than by the acts or omissions of Seller or Seller Personnel); (ii) was known prior to the date of this Agreement by Seller or Seller Personnel and was not obtained from any person under any obligation of confidentiality to Owner; or (iii) is required to be disclosed pursuant to law, legal process or regulation. In addition, Seller, on behalf of itself and Seller Personnel, agrees, in connection with its performance of the Deliverables, to keep any and all information confidential with respect to Seller's pricing or fee information. Seller shall not refer, either directly or indirectly to Owner in any advertising or other published material without the prior written consent of Owner.

13. Owner's Project Manager. The Project Manager identified in the Agreement, or any substitute designated as such in writing from Owner to Seller, is Owner's representative with full power to bind Owner.

14. Building Owner/Manager: Owner reserves the right to designate, by notice to Seller (if not so designated on page 1 of the Agreement) one or more persons or entities that is Owner or manager of the Site or the existing building within which the Work is to be performed (if any, the "Building") as a Building Owner/Manager. To the extent a Building Owner/Manager is so designated, all provisions of this Agreement relating to the Building Owner/Manager shall apply, and mean and refer, to the persons or entities so designated. To the extent a Building Owner/Manager is not so designated, no force or effect shall be given to those provisions to the extent related to the Building Owner/Manager.

If Building Owner/Manager is different from Owner, Seller agrees that: (a) Seller shall at Seller's sole cost and expense arrange directly with Building Owner/Manager for all access to the Work Area, storage at the Site, use of elevators and other vertical transportation, temporary utilities and facilities; and (b) Seller shall at Seller's sole cost and expense comply and cause others to comply with all requirements of Building Owner/Manager with respect to the conduct of its activities at the Site, and the activities of the employees of Seller and subcontractors, so that the foregoing shall not interfere with the activities of Building Owner/Manager or other tenants of the Building.

15. Safety Provisions. Seller shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Seller shall take all reasonable precautions for the safety of and provide all reasonable protection to prevent damage, injury or loss to all of its employees at the Site and all other persons who may be affected t, and all property at the Site or otherwise used in connection with the Work. Seller shall maintain a drug and alcohol free workforce at all times while on the Site.

16. Undue Influence. Seller and Seller Personnel shall not provide, directly or indirectly, and have not at any time in the past provided, directly or indirectly, funds or other considerations, or special or unusual treatment, to any person or entity (including, but not limited to, Owner or Owner's employees and agents), to improperly procure special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between Owner and Seller. Additionally, Seller shall cause Seller Personnel to comply with the restrictions contained in the preceding sentence.

17. Audit. Owner shall have the right upon fifteen (15) days' prior written notice to audit the books and all

records (whether on paper or in electronic form) of Seller relating to the Deliverables performed for Owner and to place personnel (who may be employees of Owner or a third party designated by Owner for such purpose) in Seller's office for purposes of such audit.

18. Compliance with Law.

A. Seller represents and warrants that its performance under this Agreement and its business are in full compliance with all applicable federal, state and local laws and government rules and regulations including, but not limited to:

- (i) all applicable requirements of the equal opportunity and affirmative action clauses set forth in Executive Order 11246 (applicable to subcontractors), as amended, in the regulations of the Department of labor implementing the Vietnam Era Veterans Readjustment Act of 1974, and in the Rehabilitation Act of 1973, as amended, which, together with the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated by reference. Seller further agrees to comply with Owner's policy of maintaining a business environment free of all forms of discrimination, including sexual harassment and to not discriminate against any of Seller's employees or applicants for employment because of age, race, color, religion, sex, national origin, ancestry, disability, handicap or veteran status or any other basis prohibited by applicable federal, state or local law;
- (ii) ensuring that all individuals designated to perform or provide the Deliverables under this Agreement are either citizens of the United States or are legally eligible to work in the United States; and
- (iii) complying with all applicable immigration laws and regulations relative to those individuals who are not citizens of the United States.

B. Seller agrees that Seller will cooperate with Owner and all appropriate enforcement agencies in absolving Owner of any liability in the event a charge of discrimination is brought against Owner by any of Seller Personnel.

19. Hazardous Materials.

A. Seller shall not use, in connection with the Work, any asbestos containing construction materials or any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

B. Construction Contractor shall not use, in connection with the Work, any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

20. Waiver. Any delay or failure of any party at any time to require performance by any other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that or any other provision of this Agreement and shall not be construed as (i) a waiver of any subsequent breach of any provision, (ii) a waiver of this provision itself or (iii) a waiver of any other right under this Agreement.

21. Notice. All notices required or permitted to be given by the Contract Documents must be in writing and given in accordance with this Section. Written notice shall be deemed to have been duly served only if (i) intended

for Seller, delivered in person to Seller's project superintendent at the Site, or (ii) if mailed, within three calendar days after the date it is sent by either registered or certified mail, or (iii) if sent by overnight courier, on the weekday (which is not a holiday) after it is delivered to such overnight courier in sufficient time for next day delivery, in each case for clauses (ii) and (iii) addressed to Owner or Seller, as the case may be, at the respective address for such notice to be given provided in the Agreement. Either party may change the respective address for receipt of notices under clauses (ii) and (iii) by furnishing at least 10 business days advance written notice of such change in address to the other party.

22. Amendment. This Agreement may not be modified except in writing, signed by the party against whom the modification is to be enforced.

23. Assignment. Owner may assign its rights and obligations under this Agreement, in whole or in part, to any individual, firm, corporation, business trust, partnership, or other entity and shall include any successor (by merger or otherwise) of such entity; however, Owner agrees to notify Seller of any such assignment. Regardless of the foregoing, Owner may assign its rights and obligations under this Agreement to any Affiliate without the notice to or consent from Seller. Seller may not assign its rights or obligations under this Agreement, in whole or in part, to any entity without the prior written consent of Owner. Subject to the foregoing, the terms and conditions of this Agreement will be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. All assignments or other transfers in violation of the foregoing will be null and void and will have no force or effect. For purposes of this Agreement, the term "Affiliates" will mean Bank One Corporation and any individual, firm, corporation, business trust, partnership, or other entity and shall include any successor (by merger or otherwise) of such entity that is owned or controlled, or under common control with Bank One Corporation, directly or indirectly, whether now or in the future.

24. Survival of Provisions. Sections 6, 7, 8, 12, 25 and Subsections 4E, 4G and 18B of this Agreement shall survive termination of this Agreement.

25. Arbitration and Governing Law. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Any controversy or claim arising out of or relating to this Agreement, or the breach of the same, shall be settled through consultation and negotiation in good faith and a spirit of mutual cooperation for up to fifteen (15) days commencing on the date when one party gives written notice to the other party of any controversy or claim. However, if those attempts fail, the parties agree that any misunderstandings or disputes arising from this Agreement shall be decided by binding arbitration which shall be conducted, upon request by either party, before one (1) arbitrator designated by the American Arbitration Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA, and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code). Notwithstanding these arbitration procedures, either party may apply to any state or federal court to: (i) enforce the Agreement to arbitration; (ii) seek provisional injunctive relief so as to maintain the status quo until arbitration; (iii) avoid the expiration of any applicable limitation period; (iv) preserve a superior position with respect to creditors; or (v) challenge or vacate a final decision or award of an arbitration panel that does not comport with the express provisions of this Section 25. This Agreement will be governed and interpreted by the internal laws of the state where the project is located excluding any conflict of laws rules or provisions which would refer to and apply the substantive laws of another jurisdiction.

26. References, Schedules and Exhibits. Unless otherwise specifically stated to the contrary, all references to sections, subsections, schedules or exhibits contained in this Agreement refer to sections of, subsections of, schedules to and exhibits to this Agreement. The exhibits and schedules to this Agreement are incorporated into this Agreement by reference and are a substantive part of the Agreement as though fully rewritten in this Agreement. Notwithstanding the foregoing sentence, in the event any of the provisions of any exhibit or schedule conflict with any of the provisions contained in the body of this Agreement, the provisions contained in the body of this Agreement shall control.

27. Extent of Agreement. This Agreement, including the exhibits and schedules, represents the entire and integrated agreement between Owner and Seller with respect to the subject matter hereof; all prior negotiations, representations or agreements, either written or oral are superseded. Purchase orders exchanged between the parties will be written for billing purposes only and shall not supersede or supplement the provisions of this Agreement.

28. Authority. Seller represents to Owner that Seller has the authority to enter into this Agreement and has taken all the requisite action necessary to establish that authority.

29. M/WBE.

A. Bank One is committed to serving the diverse needs of its communities by identifying qualified Minority and Women Owned Businesses ("M/WBE"), Disabled Business Enterprises ("DBE"), and Small Business Enterprises ("SBE"), each certified by appropriate state or local organizations (collectively "Historically Underutilized Businesses" or "HUB's"), that add value to the procurement process.

B. Bank One expects its suppliers to join and support Bank One's efforts to utilize M/WBE's for at least five percent (5%) of their total enterprise spend. Failure to achieve this goal may be considered a material breach of this Agreement and may result in termination of this Agreement cause.

C. As part of the parties' obligations under this Section, the parties will perform the following:

(i) Identify M/WBE, DBE, and SBE Direct Opportunities: Identify procurement opportunities that may exist relating to this Agreement that include, or may include, M/WBE participation in the production or distribution of the Vendor's products or services.

(ii) Identify M/WBE, DBE, and SBE Indirect Procurement Opportunities: Identify products and services that Vendor purchases to run its day-to-day operations that may be purchased from M/WBE suppliers.

(iii) If Bank One has a list of potential M/WBE suppliers who can perform under this Agreement, Bank One will provide that list to Vendor. If Bank One does not have a list of potential M/WBE suppliers, Vendor will work directly with Bank One's Corporate Supplier Diversity Development ("CSDD") representatives to identify such suppliers and to implement a process to increase M/WBE opportunities with Vendor.

(iv) Vendor will submit a Procurement M/WBE Participation Quarterly Report six weeks after the end of each calendar quarter (i.e., May, August, November, and February of each year). This Report will list M/WBE, DBE, and SBE entities that Vendor utilized, both Direct Opportunities and Indirect Procurement Opportunities, for the previous quarter and such other information as Bank One may request from time to time. Vendor will contact a representative from CSDD to receive an explanation of the quarterly reporting process. A form of the Report is attached as Schedule B to these General Conditions.

(v) Vendor agrees that it will assist Bank One in the continued development of its HUB program. Vendor assistance will include, but not be limited to participating in trade shows developing seminars and participating in discussions with local councils.

D. The provisions of this Section 29 shall not modify or otherwise affect Seller's obligation under Section 7.

30. Most Favored Customer. During the term of this Agreement, including any renewals or extensions hereof, Seller will provide the Product / Services, including labor and materials, to Owner as a most favored customer ("MFC"). For purposes of this Agreement, a most favored customer is a customer of Seller who purchases a quantity of labor, material or other services from Seller similar to the purchase of another customer and if the other customer's terms and conditions are more favorable than those offered to the most favored customer (excluding those prices and service levels resulting from the application of this provision) then the most favorable terms shall apply to the most favored customer. To determine whether Owner is an MFC, Seller will evaluate and compare the following items with Seller's other customers: i) the overall quantity of labor, material, or other services Owner acquires from Seller; ii) the total dollar amount Owner spends with Seller; iii) the service levels provided to other customers of similar labor, material, or other services; iv) whether a substantial portion of the labor, material, or other services acquired by Owner are for a purpose similar to that of another customer, and v) the per unit cost of providing a substantial portion of the labor, material, or other services to Owner is within two (2%) percent of the per unit cost of providing similar labor, material, or other services to another customer. To ensure compliance with this Section, Seller agrees it will allow Owner, at least once annually, an opportunity to audit the relevant books and

records of Seller. Owner will provide Seller with thirty (30) days written notice prior to an audit. Seller will use its best efforts to provide Owner with all information necessary to accurately complete the audit in a timely fashion. Owner acknowledges and agrees that any audit under this Section will be subject to Seller's obligations of confidentiality with its other customers. If the relevant records of other customer accounts are subject to confidentiality restriction, Seller will provide Owner with all information necessary to perform an audit except for disclosing customer identities. If, after an audit, Owner determines that Owner was qualified as an MFC, and Seller failed to apply MFC terms, Seller will reimburse Owner retroactively for the savings Owner should have received as an MFC.